

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

MAR 25 1997

In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

MD Docket No. 96-186

TO: The Commission

**Comments of the
National Association of Broadcasters**

The National Association of Broadcasters ("NAB")¹ submits these comments on the Commission's *Notice of Proposed Rulemaking*. NAB is disappointed that the Commission did not propose adoption of the population and class-based system of allocating fees for commercial radio stations that NAB submitted,² and instead proposed using the same system of class-based fees that has been in place since 1994. NAB urges the Commission to adopt the NAB plan for use in collecting regulatory fees for FY 1997.

The Commission asks for additional comments on the NAB fee proposal, as well as fee proposals submitted by the Montana Broadcasters Association. In reply comments on the *Notice of Inquiry* in this proceeding, the Montana Association provided additional information about its plan, as well as a critique of the NAB plan as insufficiently progressive. Montana made clear that

¹ NAB is a nonprofit, incorporated association of broadcast stations and networks. NAB serves and represents the American broadcasting industry.

² Comments of the National Association of Broadcasters, MD Dkt. No. 96-186 (Dec. 20, 1996).

the fees it proposed would vary depending on the Arbitron radio market in which a station operates. As NAB pointed out in connection with the Commission's earlier proposal to base radio fees on Arbitron market designations, the inclusion or exclusion of particular stations from Arbitron radio markets may vary from book to book and cannot be used to reliably determine which stations are in a market.³ Thus, the Montana plan would result in some stations paying a relatively high fee one year (when they were included in a radio market) and a lower fee the next (when Arbitron did not include them). Any use of Arbitron market designations would result in unacceptable variations in fees over time.

The Montana Association alternatively contended that the Commission could adopt the NAB population-based approach to determining fees if the fee levels were changed to provide for the same fee per potential listener across the board. There are several reasons why the Commission should not adopt that proposal. First, one of the benefits of using broad population classes, as NAB proposed, is that the Commission can determine fee levels using decennial census data and would not be required to constantly recalculate fees because incremental changes in population would not affect fee levels. Under the Montana approach, the Commission would be under pressure to adjust the fee levels for minor changes in population.

Further, the Montana proposal rests on an unjustified assumption that the sole determinant of fee levels should be population or market size. Instead, the Act provides that the Commission shall adjust fees "to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area

³ See Comments of the National Association of Broadcasters, MD Dkt. No. 95-3 (Feb. 13, 1995) at 2-3.

coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.” Communications Act § 9(b)(1)(A), 47 U.S.C. § 159(b)(1)(A). The Commission is instead directed to consider a wide range of factors in establishing fees and, while equitable fee levels between larger and smaller stations is an appropriate objective, it need not be the Commission’s only goal.

The costs of regulating stations serving different sized audiences do not vary greatly, and certainly far less than the 250:1 and 125:1 ratios between the highest and lowest fees that the Montana Association suggests for AM and FM stations, respectively. Further, while stations in larger markets can reach a potentially larger audience, they also generally face more competition. Thus, their revenues and other benefits they receive from their license are not likely to increase directly with the size of their potential audience. The Montana proposal to make population served the sole criteria for setting fees would rest on an unjustified assumption that an increase in audience ineluctably leads to increased revenues and profits. Indeed, although fees for television stations do vary by market size, it could not be argued that they result in the kind of uniform “per pop” fee levels that Montana advocates. The NAB fee proposal instead would give the Commission a reliable way of assessing fees while recognizing that larger and smaller stations should pay different amounts.

The Commission points out (*Notice* ¶ 36) that there are discrepancies between the database NAB submitted and the Commission’s estimate of the number of paying stations in each class. NAB will work with the Commission to resolve these discrepancies. Even if some remain, the Commission should utilize the population and class-based approach to setting fees for the stations it concludes will be paying fees.

Other Fee Issues

The Commission proposes to use its new cost accounting system to determine the revenue targets for each class of licensees. The cost accounting data, however, does not allow allocation of costs among classes of radio and television stations. The system of allocating those costs proposed in the *Notice* may result in excessive fee levels for certain classes of stations. NAB urges the Commission to reexamine the methodology it employed to make allocations among station classes.

The *Notice* proposes regulatory fees for television stations outside of the top 100 markets of 835 dollars for VHF stations and 815 dollars for UHF stations. At the same time, the Commission proposes a 1997 regulatory fee of 975 dollars for satellite television stations. When it first adopted a schedule of regulatory fees, the Commission also imposed relatively high fees on satellite stations. *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd. 5333 (1994). It later reconsidered that decision and refunded fee payments to the licensees of satellite stations. *Implementation of Section 9 of the Communications Act (Reconsideration)*, 10 FCC Rcd. 12759 (1995). Satellite stations generally operate as translators for another station and impose very little regulatory burden on the Commission. The Commission should revise the proposed fee schedule to reduce the fees for satellite stations to a level substantially below the fees to be paid by full-service stations.

Finally, NAB suggests that the Commission could improve the fee collection process by more specifically identifying the broadcast auxiliary licenses for which fees are payable. Many licensees appear to be confused about which of their facilities require regulatory fee payments. Incorporating a list of auxiliary licenses for which fees are due in the Commission's order on fees

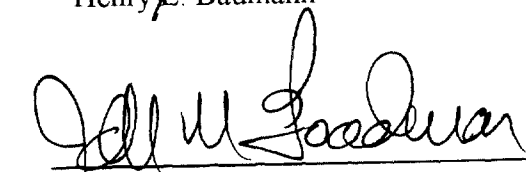
and in the material it provides to licensees would aid stations in complying with the fee requirements.

Conclusion

In setting regulatory fees for FY 1997, the Commission should adopt the population and class-based approach proposed by NAB for commercial radio stations.

Respectfully submitted,

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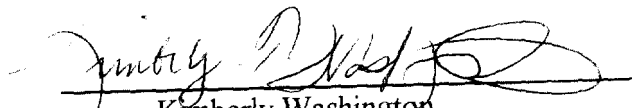
March 25, 1997

Certificate of Service

I, Kimberly Washington, hereby certify that I have, this 25th day of March, 1997, caused to be sent by mail, first-class postage prepaid, copies of the foregoing "Comments of the National Association of Broadcasters" to the following:

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